Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 24 April 2017

Case Number: T 2309/11 - 3.5.06

Application Number: 07848476.3

Publication Number: 2092422

IPC: G06F9/445

Language of the proceedings: EN

Title of invention:
USB autorun device

Applicant:
Arkeytyp IP Limited

Headword:
USB autorun device I/ARKEYTYP

Relevant legal provisions:
EPC 1973 Art. 56, 84

Keyword:
Inventive step - both requests (no)

Decisions cited:
T 0286/10, T 1711/11

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2309/11 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 24 April 2017

Appellant: (Applicant)	Arkeytyp IP Limited 25 Bank Place Mellow, Co. Cork (IE)
Representative:	Langley, Peter James Origin Limited Twisden Works Twisden Road London NW5 1DN (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 10 June 2011 refusing European patent application No. 07848476.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	W. Sekretaruk
Members:	M. Müller
	G. Zucka

Summary of Facts and Submissions

I. The appeal lies against the decision of the examining division, with reasons dispatched on 10 June 2011, to refuse European patent application No. 07 848 476.3. Reference was made *inter alia* to the documents:

D1: Anon, "The Internet Webkey is Quick n'Easy", iNETready Communications Inc., 18 October 2006, retrieved from http://web.archive.org/web/20061018060807/http://www.internetwebkey.com/pdf/usb-webkey-datasheet.pdf (on 15 February 2008), and

D4: WO 2007/077439 A2 (filed on 5 January 2007, claiming priority of 5 January 2006),

and it was argued that then claim 1 lacked novelty over D4 and inventive step over D1.

II. A notice of appeal and a statement of grounds of appeal were filed and the appeal fee was paid on 10 August 2011. The appellant requested that the decision be set aside and that a patent be granted on the basis of claims 1-19 of a main request or 1-18 of an auxiliary request, both as filed with the grounds of appeal, the other documents on file being:

description pages
1-4, 8-71 as originally filed,
5-7 received on 18 March 2010, and
drawings, sheets
1/33-33/33 as originally filed.

III. In an annex to a summons to oral proceedings, the board introduced an additional document, namely

D5: US 2006 143326 A1 (published 29 June 2006),

and informed the appellant of its preliminary opinion that claim 1 of both requests *inter alia* lacked clarity (Article 84 EPC 1973) and inventive step over D1 in view of D5 (Article 56 EPC 1973).

IV. In response to the summons, the appellant did not file any amendments or arguments. With letter of 21 April 2017, it informed the board that it would not be making written submissions or attending the oral proceedings. Accordingly, the oral proceedings were held on 24 April 2017 in the appellant's absence.

V. The sole independent claim 1 of the main request reads as follows:

"A portable, application-specific USB autorun device that, following connection to a computer terminal, automatically initialises or presents itself as a known type of device and then automatically sends to the terminal a sequence of data, the data complying with a standard protocol, that sequence of data automatically causing content to be accessed;

wherein the device (i) includes a standardised, single USB module that includes a USB microcontroller, the standardised, single module being designed to be attached to or embedded in multiple types of different, application specific packages but (ii) excludes mass memory storage for applications or end-user data, and

wherein the device, following connection to the terminal, initialises or presents itself as a HID keyboard and then sends to the terminal a predefined sequence of keycodes automatically without manual interaction; the keycodes complying with the human interface device (HID) keyboard standard protocol, and

in which the HID keycode sequence alone automates the direct access to remotely stored content by causing a URL to be sent by that terminal to open a specific website address."

The sole independent claim 1 of the auxiliary request reads as follows:

"A portable, application-specific USB autorun device that, following connection to a computer terminal, automatically initialises or presents itself as a known type of device and then automatically sends to the terminal a sequence of data, the data complying with a standard protocol, that sequence of data automatically causing content to be accessed;

wherein the device, following connection to the terminal, initialises or presents itself as a HID keyboard and then sends to the terminal a predefined sequence of keycodes automatically without manual interaction; the keycodes complying with the human interface device (HID) keyboard standard protocol, and in which the HID keycode sequence automates the direct access to remotely stored website content by causing a URL to be sent by that terminal to open a specific website address,

and in which an ID is appended to the URL and passed as parameters to a redirection server so that the device and/or user can be identified by the re-direction server and a URL sent by the re-direction server to open the specific website address on a web browser running on the terminal."

VI. At the end of the oral proceedings, the chairman announced the board's decision.

Reasons for the Decision

Decision in the appellant's absence

1. According to Article 15(3) RPBA the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned. Therefore, and also in accordance with Article 15(3) RPBA, the board is treating the appellant as relying only on its written case. The following reasons rely substantially on the board's preliminary opinion as communicated to the appellant with the summons to oral proceedings.

Allegedly inconsistent behaviour of the EPO, right to fair proceedings

2. Document D4 corresponds to European patent application No. 07 700 311.9. The appellant argued that there was an inconsistency between the way in which that case and the present case were handled in examination (see the grounds of appeal, points 3-6). More specifically, the examining division responsible for D4 raised an objection under Article 123(2) EPC against certain features which also occured in claim 1 of the present invention, whereas the examining division responsible for the present case found that D4 disclosed all features of claim 1. The appellant expressed its confusion about this inconsistency and took the position that the board should find, for reasons of fairness, that D4 did not anticipate present claim 1 (see the grounds of appeal, point 9).

2.1 This issue need not be decided, because the present decision does not depend on the disclosure of D4.

2.2 Moreover, the board notes that D4 and the present case were handled by different examining divisions. It is unavoidable that examining divisions in two cases may come to different conclusions on similar or even the same questions. Hence, from the opinion of the examining division in one individual case the applicant cannot normally derive any legitimate expectations vis-à-vis the examining division, let alone the board of appeal, in a different case. The final arbiter in such situations, competent to decide which conclusions of two examining divisions are correct, if any, are the boards of appeal. In their decisions, the boards are obviously not bound by the decision under appeal. Still less can they be bound by an objection raised by an examining division in a different case.

The invention

3. The invention relates to what has been called a "webkey", i.e. a small "autorun" USB device which, when plugged into a terminal computer, automatically connects the user to a predetermined website (see the description, e.g. on page 11, first and last paragraphs). It does this by producing a stream of key codes like those that would have been created by keystrokes on a USB keyboard compliant with the "Device Class Definition for Human Interface Devices" (HIDs) of the USB standard (see page 1, penultimate paragraph, and page 3, paragraph 3). The device is meant to be cheap so that it can be used e.g. as a promotional give-away (see figures 3-20). The price of known USB devices, especially of memory sticks, being dominated by the cost of the memory, the invention is expressly not intended as a "memory product" (see page 11, paragraph 3). The application refers to USB autorun devices as being known (see page 1, paragraph 2;

page 3, paragraphs 3 and 4). In this context, reference is made to D4.

The prior art

4. D1 discloses a webkey which offers the same functionality as the claimed device (see page 3, paragraph 2), namely automatically connecting the user to a predetermined website when the webkey is plugged into the computer. The user is thus freed from having to memorise and type in a URL of interest. D1 does not disclose the amount of memory on the webkey. A number of application scenarios are outlined (see page 2, lower half). In one of them, the webkey's unique ID is transmitted with the URL of interest (see in particular the iVote campaign).

5. D5 discloses a USB device (see figures 1 and 2) which behaves like a (second) USB keyboard (see paragraphs 19 and 37) by outputting key codes corresponding to those generated by strokes at a keyboard. A central idea of D5 is that these key codes are generated in response to an acoustic stimulus detected by an integrated microphone (see paragraph 20). This enables the user for instance to trigger the opening of the Windows start menu with a clap of his hands. This disclosure is independent of other functions the USB device might also have. In particular, it does not appear to disclose that the USB device is also a USB "mass" memory device.

D1 is prior art, Article 54(2) EPC 1973

6. The board notes that the appellant did not challenge the examining division's implicit understanding that D1 was available to the public before the priority date of the present application, as established by the fact

that it had been archived by the Web Archive before that date, and therefore forms part of the state of the art for the case to hand. The board has no objections to this assumption either (thereby following recent jurisprudence of the boards of appeal, see e.g. T 286/10, reasons 4.2, and T 1711/11, reasons 2.2).

Clarity, Article 84 EPC 1973, and claim construction

7. Claim 1 of the main request specifies that the device is "application-specific" and includes a "standardised [...] USB module [...] designed to be attached to or embedded in multiple types of different, application specific packages".

7.1 The board notes that the term "standardised" has, in itself, no technical meaning. Accepting a feature of some component as a standard does not change the feature itself; it merely assures developers and users that compliant components of the same type share that feature.

7.2 Also the indication that the claimed device is "application-specific" and the USB module "designed" for use by "multiple types of different, application specific packages" has no clear technical implication. A single component may be used by any application package that conforms to its interface specification, whether or not the component is standardised and without that component being specifically "designed" for such use.

8. Claim 1 of the main request specifies that the USB module as "excludes mass memory storage for applications or end-user data". The board considers

that it is unclear what type or amount of memory is hereby excluded and, therefore, what technical effect this exclusion might have.

9. Claim 1 of the main request further specifies that the "HID keycode sequence alone automates the direct access to remotely stored content". In the board's view this language is unclear, because a keycode sequence cannot, by itself, i.e. "alone", automate anything, it can do this only in co-operation with the computer terminal to which the USB device is connected.

Inventive step, Article 56 EPC 1973

10. The board considers that the claims, notwithstanding the above objections under Article 84 EPC 1973, are clear enough to allow an assessment of inventive step.

Main request

11. In the board's judgement, D1 discloses all the features of claim 1 except two. Firstly, D1 does not disclose that the webkey must not contain "mass memory storage". And secondly, D1 does not disclose the use of a "fake HID keyboard". In fact, D1 does not disclose at all how its functionality of bringing customers "to a pre-programmed web page location" is implemented (page 3, paragraph 2). While it may be true, as the appellant suggests (see the grounds of appeal, point 19), that the iWebkey is, in fact, "a CD emulation based USB device", D1 does not disclose this, nor does it exclude - let alone teach away from (grounds of appeal, point 21) - the possibility that the webkey may be implemented using keyboard emulation.

11.1 Starting from D1, the objective technical problem solved by these differences may be considered as being how to implement the described functionality.

11.2 The board considers that the express goal of D1 that users should be spared the risk of "typing incorrect URL's" (see D1, page 1, sentence 1, and page 3, paragraph 3) suggests that the webkey should "do the typing" for them. Trying to implement this idea, the skilled person would find in D5 that a suitable "fake HID keyboard" has been implemented and would not hesitate to use it to solve the problem mentioned.

11.3 Moreover, the board considers it an obvious matter of cost-effectiveness to exclude expensive memory if it is not needed.

11.4 In summary, the board concludes that the claimed invention is an obvious implementation of the device of D1 using technology of D5, Article 56 EPC 1973.

Auxiliary request

12. Claim 1 of the auxiliary request differs from claim 1 of the main request in that it lacks the second paragraph referring to the "standardised, single USB module" and the exclusion of "mass memory storage", and in that it comprises an additional paragraph specifying that an "ID is appended to the URL and passed as parameters to a redirection server so that the device and/or user can be identified by the re-direction server and a URL [can be] sent by the re-direction server to open the specific website address on a web browser running on the terminal".

12.1 URLs with appended IDs are well known in the art, for instance as a means to simplify access to websites requiring authentication. If the website at the URL of interest is such a site, it would thus be obvious to "append" an ID to the URL. The transmission of such an extended URL is as straightforward as the transmission of a plain URL. It is also noted that D1, too, discloses the transmission of a webkey ID in one of the application scenarios (see page 2, towards the end: iVote campaign).

12.2 Any server receiving a URL as claimed "can" in principle identify whatever the appended ID happens to identify, for instance "the device and/or user". The board notes that claim 1 does not, strictly speaking, require the "re-direction server" to actually identify the device or user. Moreover, however, claim 1 does not specify what the re-direction server might do with the identity thus determined. For the purpose of claim 1, therefore, the claimed "re-direction" server cannot be distinguished from any other server which redirects URLs. Such servers being known in the art, they cannot give rise to inventive step.

13. Therefore, also claim 1 of the auxiliary request lacks inventive step over D1 and D5, Article 56 EPC 1973.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

B. Atienza Vivancos W. Sekretaruk

Decision electronically authenticated